

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #7	CCRB Case #: 202105453	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/12/2021 4:03 AM	Location of Incident: West 99th Street and Amsterdam Avenue	Precinct: 24	18 Mo. SOL 3/12/2023	EO SOL 3/12/2023	
Date/Time CV Reported Sun, 09/12/2021 10:04 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 09/12/2021 10:04 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Fidel Rosario	00000	943759	024 PCT
2. SGT Jose Toribio	05467	932039	024 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Natalie Lamarche	05120	970652	024 PCT
2. POM Eugene Choi	03654	941552	024 PCT
3. POM Matthew Peragine	04006	957019	024 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Fidel Rosario	Abuse: Lieutenant Fidel Rosario damaged § 87(2)(b) s property.	
B.SGT Jose Toribio	Abuse: Sergeant Jose Toribio did not process § 87(2)(b) s complaint.	

Case Summary

On September 12th, 2021, the CCRB received the following website complaint from § 87(2)(b) [BR 1].

At about 04:00 a.m. on September 12th, 2021, Lieutenant Fidel Rosario, Police Officer Matthew Peragine, Police Officer Natalie Lamarche, and multiple other officers assigned to the 24th Precinct stopped § 87(2)(b)'s vehicle at a vehicle safety checkpoint. § 87(2)(b) was arrested for refusing to provide his driver's license and operating an unregistered vehicle. Because of Lt. Rosario's actions, § 87(2)(b)'s cellphone was damaged while in police custody [**Allegation A: Abuse of Authority – Property Damaged**, § 87(2)(g)]. After being released, § 87(2)(b) told PO Peragine that he wished to make a complaint about the damage. PO Peragine or PO Lamarche related this to Sgt. Toribio, who advised that a city-involved accident report should be prepared. However, no civilian complaint was generated. [**Allegation B: Abuse of Authority – Refusal to Process Civilian Complaint**, § 87(2)(g)]. § 87(2)(b) received a slip of paper with handwritten instructions for making a complaint with the CCRB, but did not feel as though his complaint had been properly addressed.

The CCRB possesses 12 BWC videos in connection with this incident [BR 2].

Findings and Recommendations

Allegation A: Abuse of Authority – Lieutenant Fidel Rosario damaged § 87(2)(b)'s property.

Allegation B: Abuse of Authority – Sergeant Jose Toribio refused to process § 87(2)(b)'s complaint.

At about 4:00 a.m. on September 12th, 2021, Lt. Rosario and multiple officers assigned to the 24th Precinct stopped § 87(2)(b) at a vehicle safety checkpoint at 99th and Amsterdam in Manhattan. (The protocol for selecting vehicles to stop was randomized, as required by law.) After § 87(2)(b) refused to provide his driver's license, and officers on-scene determined that his vehicle was not properly registered, § 87(2)(b) was arrested. Between 03:57 and 04:10 in his own body-worn camera recording [BR 13], Lt. Rosario is seen taking § 87(2)(b)'s cellphone from his hand, so that he can be handcuffed, and placing it on the hood of § 87(2)(b)'s car. Lt. Rosario, his BWC recording shows, did not take any subsequent actions to safeguard § 87(2)(b)'s cellphone. Furthermore, Lt. Rosario did not advise any officers -- including PO Lamarche, § 87(2)(b)'s arresting officer, and PO Choi, the officer that drove § 87(2)(b)'s vehicle to the stationhouse following his arrest -- of where he had placed the phone, or instruct any officers to take custody of the phone.

PO Choi's BWC recording shows that he drove § 87(2)(b)'s car to the 24th Precinct stationhouse. Lt. Rosario stated during his CCRB interview [BR 3] that § 87(2)(b)'s cellphone apparently slid from the roof of the car onto the roadway, causing the screen to shatter. Officers returned the phone along with other items to § 87(2)(b) after he was released. In addition to the external damage, § 87(2)(b) stated during his CCRB interview [BR 4], the phone did not function properly.

It is undisputed that § 87(2)(b) told PO Peragine outside of the 24th Precinct stationhouse that he wished to make a complaint about the damage to his phone. CCTV video recorded by the 24th Precinct [BR 5] may capture the conversation at 31:10. (Note that the footage before this clip was damaged or corrupted. As a result, a portion of the time that § 87(2)(b) was outside of the stationhouse following his release cannot be viewed.) § 87(2)(b) stated that PO Peragine told him

that he would be right back, and then went to speak with the desk officer. PO Peragine then returned with a slip of paper — § 87(2)(b) provided photos of the slip's two sides [BR 6 and 7] -- with handwritten instructions for making a CCRB complaint. PO Peragine stated during his CCRB interview [BR 8) that he could not recall whether § 87(2)(b) wished to make a complaint at the stationhouse or simply wanted information for how to make a complaint. Either PO Peragine or PO Lamarche then told the desk officer, Sgt. Toribio, that § 87(2)(b) wanted to make a complaint, PO Peragine stated. Sgt. Toribio instructed PO Peragine or PO Lamarche that a city-involved accident form should be completed, which PO Lamarche did. As far as PO Peragine was aware, a complaint report was not prepared; he could not say why. PO Peragine denied that the handwriting on the slip § 87(2)(b) received was his own.

There is no footage of PO Peragine or PO Lamarche handing a slip of paper to § 87(2)(b). Nor is there footage of the stationhouse desk. During his CCRB interview [BR 9], Sgt. Toribio stated that he was the only member of service working behind the desk. He denied recalling § 87(2)(b)'s arrest or attempt to make a complaint. If a prisoner's cellphone was damaged while in police custody, Sgt. Toribio or another officer would create a city-involved accident report. He stated that if a civilian asked to make a complaint, a police officer would usually inform him or her how to proceed, including the option of making the complaint at the stationhouse. Sgt. Toribio would only speak to the civilian if he or she was not satisfied with the officer's instructions.

Under NYPD PG 208.03, arresting officers and their supervisors are responsible for safeguarding and/or vouchering property taken from prisoners. NYPD Patrol Guide 208.02 [BR 14].

Lt. Rosario evidently placed § 87(2)(b)'s phone on top of § 87(2)(b)'s car. Given this, and because he was the ranking officer on-scene, ultimately responsible for the decision to arrest § 87(2)(b), Lt. Rosario was obligated to ensure the cellphone was safeguarded and vouchered according to department protocol. § 87(2)(g)

§ 87(2)(g) PO Peragine told Sergeant Toribio that § 87(2)(b) wished to make a complaint, at which point the sergeant became responsible for addressing the complaint. § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - Sgt. Toribio has been a member of service for nineteen years, over which time he has been the subject of three prior complaints and five allegations, none of which have been substantiated. § 87(2)(g)
 - Lt. Rosario has been a member of service for fifteen years, over which time he has been the subject of five cases and fifteen allegations, six of which were substantiated. § 87(2)(g)
- His summary of employment history has been added to the case file [BR 15].

- Case 201609147 involved three substantiated allegations of stop and three substantiated allegations of frisk. The board recommended formalized training, which is the penalty that the NYPD imposed.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- According to the New York City Comptroller's Office, there are no notices of claim related to this incident [BR 12].

- § 87(2)(b)

Squad: 7

Investigator:	<u>Will Rasenberger</u>	<u>Inv. Will Rasenberger</u>	
01/19/2022			

Signature

Print Title & Name

Date

Manager Vanessa Rosen

2/2/2022

Squad Leader:	<u></u>	<u></u>	<u></u>

Signature

Print Title & Name

Date

Reviewer:	<u></u>	<u></u>	<u></u>

Signature

Print Title & Name

Date